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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BRAD HOLTORF

Plaintiff,

v.

SCOTT VOGLER, an individual; POCKET
BIKES UNLIMITED, a domestic corporation,

Defendants.

Case No. 3:09-CV-04560-EDL

**JOINT CASE MANAGEMENT
STATEMENT AND DISCOVERY
PLAN. (Proposed)**

Date: February 1, 2010

Pursuant to the Court's standing order for all judges in the Northern District of California parties submit this Joint Case Management Report and Discovery Plan:

(1) Jurisdiction and Service:	Federal question jurisdiction is conferred pursuant to USC section 1331 and 1338(a). Plaintiff does not believe that any
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1		issues exist regarding personal jurisdiction or
2		venue. It is believed that Plaintiff has served
3		all parties being that the Defendant, Pocket
4		Bikes Unlimited is a wholly owned company
5		of Defendant, Scott Vogler.
6	(2) Facts:	Around October 2004, Plaintiff met
7		with Defendant at their offices to demonstrate
8		Plaintiff's proprietary engine design.
9		Defendant executed a confidentiality
10		and non-disclosure agreement in regard to
11		Plaintiff's proprietary engine design.
12		Defendant alleges selling a similar
13		product that was designed and sold by another
14		company since June of 2003. Defendant
15		alleges having sold a total of only 16 pieces
16		and only 5 total sales of this item since
17		September 2006. Defendant alleges that
18		Plaintiff's said design has been published,
19		designed and sold for over 1 year prior to
20		meeting with Plaintiff in October of 2004.
21		Defendant subsequently disclosed the
22		invention on Defendant's website selling and
23		offering to sell the invention.
24		Defendant included the term "patent
25		pending" in their advertisements and
26		marketing materials of Plaintiff's invention.
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1		Plaintiff filed on November 1, 2004, a
2		provisional patent application serial number
3		60/624,042;
4		Plaintiff filed utility patent application
5		with serial number 11/261,862 on October 28,
6		2005;
7		The utility patent application published
8		on May 18, 2006, under publication number
9		US 2006/0102114;
10		The utility patent application issued on
11		December 2, 2008, for patent number US
12		7,458,344;
13		Defendant continued to sell and offer
14		to sell the invention during the pendency of
15		the patent application, its issuance, and up to
16		the present day.
17	(3) Legal Issues:	Plaintiff claims patent infringements
18		under 35 USC section 271 including
19		Defendant's actual or contributory making,
20		using, selling, or offering to sell the patent
21		invention within the United States.
22		This patent infringement includes
23		likely a literal infringement. See Graver Tank
24		and Manufacturing Company v. Lindy Air
25		Products Company, 339 US 605, 85 USPQ
26		328(1950).
27		

1		This patent infringement includes
2		likely infringement under the doctrine of
3		equivalents. See id 339 US at 608.
4	(4) Motions:	Defendant's motion to dismiss
5		(denied); Defendant alleges motion to dismiss
6		was not heard due to pro-se representation.
7	(5) Amendment of pleadings:	Parties do not expect to amend the
8		pleadings at this time but reserve the right to
9		add additional claims or defenses and notify
10		the court accordingly.
11	(6) Evidence preservation:	Plaintiff has taken steps to preserve
12		evidence relevant to the issues including e-
13		mails, receipts, etc. Defendant has taken steps
14		to preserve relevant materials to the case.
15	(7) Disclosures:	Parties have discussed their initial
16		disclosures after the motion to dismiss hearing
17		and Plaintiff has filed the initial disclosure
18		requirements under federal rules of civil
19		procedure 26. Defendant has not timely
20		complied with the initial disclosure
21		requirements as to the date of signing of this
22		joint case management statement.
23	(8) Discovery:	No discovery has taken place to date.
24		The scope of anticipated discovery includes
25		receipts, invoices, financial records, all
26		relating to the making, using, selling, offering
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		to sell, of the patented subject matter, evidence of Defendant's ongoing sales, use, manufacture, and offer to sell of the patented subject matter; evidence of third-party manufactured use after Defendant's publication of Plaintiff's patented subject matter; and damages.
(9)	Class actions:	This is not a class-action lawsuit.
(10)	Related cases:	There are no related cases or proceedings pending before another judge of this court or before any other court or administrative body at this time.
(11)	Relief:	<p>Plaintiff requests judgment against Defendant as follows: that Defendant has infringed, actively induced others to infringe, and/or contributarily infringed the patent;</p> <p>Defendant be enjoined and restrained preliminarily during the pendency of this action from infringing, actively inducing others to infringe, and/or contributarily infringing the patent;</p> <p>That a judgment be entered that Defendant be required to pay over to Plaintiff all damages sustained by Plaintiff due to patent infringement and that the damages be trebled under 35 USC section 284 for willful</p>

	acts of infringement; This case be judged and decreed exceptional under 35 USC section 285 entitling Plaintiff to an award of reasonable attorneys fees; That Plaintiff be awarded his costs and pre-judgment interest on all damages. Defendant asks the court to dismiss this case upon the proof of prior design.
(12) Settlement and ADR:	Plaintiff and Defendant are actively working to settle the case. The parties propose the rule 39 mediation around April 15 2010.
(13) Consent to Magistrate Judge:	The parties consent to a magistrate judge.
(14) Other References	The parties agree that the case may be suitable to binding arbitration.
(15) Narrowing of Issues:	The parties do not agree that bifurcation is appropriate, the parties endeavor to stipulate to the undisputed facts where ever possible, the parties you have any other suggestions at this time.
(16)	The parties do not believe that this case can be handled on an expedited basis.
(17) Scheduling	8/15/2010 expert witness disclosures 10/15/2010 end of discovery 11/15/2010 summary judgment due

	1/15/2011 trial
	Parties contend to follow the local patent rules regarding this case beginning 10 days after the initial case management conference.
(18) Trial	Parties agree to a jury trial and expect the trial to last approximately 60 days
(19) Disclosure of non-party interested entities or persons:	Parties have not filed a Certification of Interested Entities or Persons as required under Civ LR 3-16. At this point in time parties are unaware of any additional entities that would have a financial interest in the subject matter; or any other interest that could be affected by the proceeding.
(20) Other Matters	Parties are unaware of any other such matters that may facilitate the just, speedy and inexpensive disposition of this matter.

DATED this 01th day of February, 2010.

For Plaintiff	For Defendant
FOCAL LAW /s/ Venkat Balasubramani	Scott Vogler /s/ Scott Vogler via conference call
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